



To: All HOME & CDBG Recipients
From: IHFA Federal & State Programs
Date: February 16, 1998
Re: Section 106 Historic Review Process

Notice: FSP-98-03

Effective February 16, 1998, for any scattered-site housing programs (e.g., owner-occupied rehabilitation, rental rehabilitation, transitional housing, etc.), IHFA will no longer require HOME and CDBG grantees to receive general comment regarding the program as a whole from the Indiana Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) prior to requesting Release of Funds from IHFA. Grantees must, however, continue to receive comment from DHPA or the National Advisory Council on Historic Preservation in accordance with the Section 106 Historic Review Process for each house involved in the program prior to executing contracts or beginning construction on each individual unit.

DHPA is the state agency responsible for interpreting and implementing the Section 106 regulations, similar to IHFA's responsibility to interpret and implement HOME and CDBG regulations. It is DHPA's determination that grantees must consult them regarding *every* house to be rehabilitated or constructed with HOME or CDBG funds. The Section 106 regulations stipulate that grantees must consult with DHPA in identifying whether or not each property is historic and in assessing whether or not historic properties will be affected by the undertaking.

Section 106 regulations allow grantees, however, to conduct their own research on each property to make a determination as to whether or not each property is historic. The submission to DHPA (along with supporting documentation) would then become a request of whether or not DHPA concurs with the grantee's determination. Similarly, if a property is found to be historic, the grantee may determine in accordance with the National Register Criteria whether or not it is affected by the undertaking. Once again, the grantee would then request DHPA's concurrence.

In order to streamline the Section 106 process, IHFA strongly encourages grantees to complete this preliminary research as a part of their Environmental Review. Additionally, IHFA staff has created the enclosed "IHFA Environmental Review Checklist" to provide a standardized format for DHPA submissions. Grantees do not have to wait until all sites have been identified to forward the necessary information to DHPA, but should forward detailed project information on each individual property as it becomes available.

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Suite, 1350, South Tower
Indianapolis, IN 46204

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(800) 872-0371
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The Section 106 regulations [24 CFR 800.1 (c)(1)(ii)] state that if DHPA declines to participate, or does not respond within 30 days to a written request for participation, the grantee may consult directly with the National Advisory Council on Historic Preservation, without DHPA's involvement, to complete the Section 106 process.

Prior to the execution of construction contracts and start of construction, the grantee must have received comments from DHPA or the Advisory Council on Historic Preservation stating that the Section 106 Review Process has been satisfactorily completed.

If you have any questions regarding this correspondence, please contact Michelle L. Kincaid at (317) 232-7777 or toll-free at (800) 872-0371.

SECTION 106 HISTORIC REVIEW PROCESS

The grantee is responsible for completing both steps of an environmental review (the Release of Funds Process and the Section 106 Historic Review Process) before:

1. Executing contracts or entering into any other commitments of HOME, CDBG, or other funds (other than for activities exempt from environmental review); and
2. Initiating demolition, rehabilitation, or construction activities (regardless of the funding sources for the activity).

The grantee may execute contracts and begin construction once:

1. IHFA has notified the grantee in writing that IHFA has authorized a “Release of Funds” for each budget line item; and
2. The Indiana Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation has notified the grantee in writing that the requirements of the Section 106 Historic Review Process have been fully met.

Section 106 of the *National Historic Preservation Act* [36 CFR Part 800] requires that federally assisted undertakings take into account their effect on historic properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, in particular circumstances, to allow the National Advisory Council on Historic Preservation an opportunity to comment. [36 CFR Part 800.1 (a)].

A historic property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties.

Grantee’s are required to plan and carry out their HOME or CDBG programs as necessary to minimize harm to historic properties and to consider mitigating measures where appropriate. Section 106 requires that the historic review process be completed prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license or permit. [36 CFR Part 800.3 (c)].

The best way to reduce the time needed for Section 106 review is for the grantee to plan their projects so as to avoid adverse effects on historic properties. This can be done if the grantee or its applicant identifies all historic properties or important archaeological sites at the beginning of project planning, uses The Secretary of the Interior’s Standards for Historic Preservation Projects as a guide to designing projects that will affect historic properties, and contacts DHPA before reaching any final decisions on project design.

For non-scattered site undertakings, the Section 106 Review must be completed concurrently with the Release of Funds process. Prior to publishing for Request for Release of Funds, the grantee must receive written correspondence from DHPA or the National Advisory Council on Historic Preservation stating that the Section 106 requirements have been fully met.

For scattered site undertakings, the Section 106 Review does not need to be completed prior to the Release of Funds, but **must** be conducted on a case by case basis as specific project sites are identified. It is not necessary for the grantee to request comment from DHPA regarding the program as a whole as a part of the Release of Funds process. However, once specific sites are identified, the grantee **must** request comment from the DHPA for each property prior to executing contracts or beginning construction on the individual units. The grantee does not have to wait until all project sites have been identified to forward the necessary information to DHPA, but should forward detailed project information on each property as it becomes available.

1. Identify historic properties.

The first step in the Section 106 process is the identification of historic properties. The grantee should make an effort to determine whether or not any archaeologically, historically, or architecturally significant properties are within each project's area of potential effects (that is, the project area itself and any surrounding areas where the project could affect historic properties, if any historic properties are found to exist).

If the grantee identifies any significant properties in the area of potential effects, then it should gather together descriptions of the properties, historical information documenting the significance of the properties, and photographs of the potential historic properties. If an interim report of the Indiana Historic Sites and Structures Inventory has been published, historical information on individual properties may be available through local public libraries, university or college libraries, historical societies, or through Historic Landmarks Foundation of Indiana.

2. Evaluate nature of project effect.

The second step in Section 106 is for the grantee to assess the nature of the effect from the project on any known significant historic properties or archaeological sites. The Section 106 regulations provide for classifying the project effect in one of three categories: No effect, no adverse effect, and adverse effect. The criteria to use in assessing the nature of effect are found in 36 CFR 800.9.

In general, if there is no direct or indirect effect on significant properties or sites, a conclusion of "no effect" is justified. If there is an effect on significant properties, but the effect is neutral or preserves or strengthens the historic character of the property, a "no adverse effect" determination is justified. If the effect of the project will alter or destroy the historic characteristics that make it significant and eligible for the National Register, an "adverse effect" determination must be made.

3. Complete an IHFA Environmental Review Checklist for each project site.

4. Submit IHFA Environmental Review Checklist to DHPA

Once the grantee has identified eligible historic properties or archaeological sites and has evaluated the nature of the project's effect on any such properties or sites, the grantee must submit the IHFA Environmental Review Checklist (with attachment of photographs of all affected areas of rehabilitation/construction) to:

State Historic Preservation Officer
Division of Historic Preservation and Archaeology
Indiana Dept. of Natural Resources
Room W-274, IGC-South
402 W. Washington St.
Indianapolis, IN 46204
Phone: (317) 232-1646

The submission should provide DHPA with sufficient information about the project, its location, and how it will affect historic properties to enable DHPA to reach his own conclusions regarding whether historic properties are present and the nature of the project's effect on any such properties. DHPA staff will notify the grantee in writing if additional information is needed to complete the Section 106 review.

NOTE: The key to expediting the Section 106 review is to avoid or scale back adverse effects on historic properties. If the grantee finds that the initial project concept would adversely affect historic properties, much time can be saved if the project concept is modified to avoid or remove most of the adverse effect. Adverse effect can be avoided generally in designing a project if the Secretary of the Interior's Standards for the Treatment of Historic Properties (revised 1992) are followed. Copies of this information are available from DHPA.

5. Wait for written response from DHPA.

Substantive review of the submission by DHPA will usually occur within approximately six weeks after the submission has been received. DHPA will then write to the grantee, and if the information submitted has been adequate to allow a complete review, DHPA's letter will provide comments on whether or not DHPA concurs with the grantee's identification of all eligible historic properties or archaeological sites and the grantee's determination on the nature of the project's effect on any potential historic properties or sites.

If, after a substantive review of the information submitted, the DHPA believes that more information on eligible properties or the nature of effects will be necessary, DHPA's letter will ask the grantee for more detailed information. For example, a report from an archaeological reconnaissance-level survey of the project area or copies of any construction plans and specifications might be required.

Please note that although the federal Section 106 regulations (36 CFR Part 800) provide for the DHPA to reply within 30 days after receiving the grantee's project submission, DHPA may be unable to respond substantively within 30 days, due to a backlog of reviews. The regulations state that if DHPA does not reply within 30 days, the grantee, if it

chooses, may provide the same information directly to the Advisory Council on Historic Preservation in Washington D.C., and request the Advisory Council's comments. The Advisory Council has 30 days in which to respond.

If there is a dispute between the grantee and DHPA regarding the eligibility of a property for the National Register, then the grantee also may need to submit information on the property to the Keeper of the National Register in the National Park Service and request the Keeper's opinion on whether the properties are historic.

As already noted, each project will be found to have one of three (3) types of effects on historic properties within the area of potential effects: no effect, no adverse effect, or adverse effect.

6. Agreement on No Effect.

If, in the initial exchange of correspondence, the grantee and DHPA agree either that no historic properties are within the area of potential effects or that there is no effect on historic properties, then the Section 106 process is complete. However, if either party finds that there is some effect, whether adverse or not, then the review process continues.

7. Agreement on No Adverse Effect.

When the grantee and DHPA agree that the project will have no adverse effect on any historic properties, the grantee notifies the Advisory Council, in writing, of the project and provides the Advisory Council with an explanation of the findings that the grantee and DHPA have made (e.g., by sending copies of all of the correspondence between the grantee and DHPA) and a summary of the information that the grantee had previously provided to DHPA. The Advisory Council then has 30 days in which to comment on the grantee's and DHPA's findings. If the Advisory Council concurs with the findings, or does not object within 30 days, then the Section 106 review is complete.

8. Agreement on Adverse Effect or No Agreement on Project Effect.

In the event that the grantee and DHPA agree that the effect is adverse or they are unable to come to agreement on the project's effect, then the grantee should notify the Advisory Council of the situation and provide the Advisory Council with detailed information regarding the project, historic properties in the area of potential effects and the efforts made to identify them, the project's effect on those properties, and the views expressed by members of the public who are interested in or concerned about the project.

In some instances, the project's effect on historic properties will be considered adverse. Examples include the demolition or significant alternation of a historic building, the substantial alteration of a streetscape in a historic downtown or around a historic county courthouse square, or destruction of a significant archaeological site.

When a project would likely have an adverse effect, then the grantee, DHPA, the applicant, and in some cases, other interested agencies, organizations or individuals or the Advisory Council consult to determine whether alternatives to the adverse effect are available and feasible, and, if not, whether the adverse effect can be mitigated in some way.

9. Agreement on avoiding Adverse Effect.

If the parties are able to agree on a way to avoid the adverse effect, then the grantee must notify the Advisory Council and provide the information specified for a finding of no adverse effect.

10. Memorandum of Agreement (for mitigating Adverse Effects).

On the other hand, if the adverse effect is unavoidable, but the parties agree on measures to be taken to mitigate the effect, then a memorandum of agreement (MOA) must be drafted by the grantee and DHPA to specify how the mitigation will be carried out. If time permits and if the MOA provisions are novel or complex, it may be advantageous to send a draft of the MOA to the Advisory Council, along with some background information on the project and the affected historic properties, and request the Advisory Council's informal comments on the appropriateness of the MOA's terms. In that way the grantee and DHPA can learn whether the Advisory Council would have objections to the mitigation that the parties have settled upon.

Once the grantee, DHPA, the applicant's representative (if applicable), and other interested parties have signed the MOA, the agreement must be submitted to the Advisory Council for formal review and acceptance by that agency. Acceptance of the MOA by the Advisory Council completes the Section 106 review process.

Where a memorandum of agreement is submitted to the Advisory Council, the information accompanying the MOA should include, in addition to the information identified above regarding a finding of adverse effect, a description of alternatives to the adverse effect and measures to mitigate the effect that were considered and an analysis of why they are not feasible. If the Advisory Council has been notified previously of the consultation regarding the adverse effect and has declined to participate, then the Advisory Council has 30 days in which to sign the MOA, or to comment on it, indicating why it is unwilling to sign. If the Advisory Council has not been notified previously, then it has 60 days in which to sign the MOA, recommend changes that would make the MOA acceptable, or comment on the project.

The Advisory Council staff may be reached by telephone at (202) 606-8505. To write to the Advisory Council, one may address correspondence to:

Don L. Klima
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, N.W., #809
Washington, D.C. 20004.

11. Notify IHFA of Section 106 clearance.

Submit a copy of DHPA's Section 106 clearance notification to IHFA along with the transmittal of each project set-up form (See GIM Chapter 5).

12. Begin construction.

Once a grantee has received **both** a notification from IHFA of Release of Funds for each budget line item of the award **and** a notification from DHPA or the Advisory Council on Historic Preservation that requirements of the Section 106 Historic Review Process have been satisfied, the grantee may execute contracts and begin the CDBG or HOME undertaking.